

Generally fair tonight and Friday; light variable winds.

NUMBER 6091.

## STANDARD FILES ANSWER IN COURT

Oil Company Denies Right  
of Government to Have  
Fine Case Reopened.

RAPS JUDGE LANDIS  
FOR STAND TAKEN

Insists Prosecution Should Have  
Proved Knowledge of Law-  
ful Rates.

CHICAGO, Sept. 10.—The reply of the Standard Oil Company to the petition of the Government for a rehearing of the case in which the United States circuit court of appeals, Judge Peter S. Grosscup, presiding, wiped out the \$25,000,000 fine imposed by United States Judge Landis, was filed at 10 o'clock today.

Judge Landis originally imposed the fine after the Standard had been convicted of accepting rebates from the Chicago and Alton railroad.

The reply meets vigorously the arguments presented by the Government in its petition, tending to show that the appellate court erred in reversing Judge Landis' decision, and in remanding the case to the lower court for retrial.

Judges Grosscup, Seaman, and Baker will hear arguments later and the decision as to whether or not they will revise their former opinion is expected some time in October.

The Government's petition was filed August 21, twenty days being allowed by statute for the defendant to file an answer. The time limit would have expired at midnight tonight.

Replies in Detail.

The Standard's answer replies in detail to the Government's contention that the appellate court erred in declaring that the Government was not required to prove that a shipper had knowledge of the law, rates, on the theory that ignorance of the law is not a defense.

The Standard contended that, in making such a ruling, the trial judge not only removed the burden of proof from the Government, but also deprived the defendant of any benefits he might get from the presentation of such evidence.

One of the principal features of the Government's petition was the suggestion that the appellate court certify to the Supreme Court of the United States the question whether it was necessary for the Government to show beyond a reasonable doubt as a part of its case, that the shipper knew what the lawful published and filed rate was.

Government's Contention.

The Government's petition declared that the appellate court's ruling that it was necessary for the Government to produce such proof would make "a mere wisp of legislation; a phantom statute."

The Standard, in its answer, declares that the appellate court, having already tried and decided the case, the suggestion of certification is not a proper one to be made or entertained.

Should the appellate court deny the Government's petition for a rehearing, it is believed that Attorney General Bonaparte will order United States District Attorney Sims to take the case to the Supreme Court of the United States.

This would have the effect of bringing the whole case, in its present state, before the \$25,000,000 fine attached, before the highest court of the land.

The Standard's answer follows:

Wants Counsel Restricted.

"We may fairly insist that counsel indulging in criticism of the opinion of the court be held to a scrupulous accuracy in their treatment both of the facts, rulings, and of the record. We may require that such criticisms be confined to substantial grounds for rehearing. We may properly suggest that the repetition in the petition for rehearing of the facts and of the record be confined to the petition for rehearing."

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## WEATHER REPORT.

A tropical storm, has made its appearance in the West Indies, its center being north of San Juan, Porto Rico, this morning. Rains continue along the Gulf and South Atlantic coasts, and in Georgia and Florida. In northeastern Florida the rainfall has been excessive, 6.48 inches having fallen at Jacksonville in the last forty-eight hours. In practically all other districts other than these referred to, fair weather continued.

The temperature has increased in the extreme Northwest and the Northeastern States; changes elsewhere were slight.

The indications are that rains will continue in the East Gulf and South Atlantic States, and that generally fair weather will prevail in the Middle Atlantic and North Atlantic States, the upper Ohio valley, and the lower lake region during the next thirty-six hours.

The temperature will not change decidedly.

The winds along the New England coast will be from southwest and west; on the middle Atlantic coast light to fresh variable; on the south Atlantic coast light to fresh northeast and east, and on the east Gulf coast fresh and possibly brisk northeast and east.

Steamers departing today for European ports will have fresh southwest and west winds, and generally fair weather to the Grand Banks.

The following heavy precipitation (in inches) has been reported during the past twenty-four hours: Jacksonville, 5.15; San Antonio, 1.55; Savannah, 1.10.

TEMPERATURES.

Weather Bureau.	Air.	Sea.
9 a. m.	65	60
10 a. m.	65	60
11 a. m.	66	61
12 noon.	67	62
1 p. m.	68	63
2 p. m.	68	63
3 p. m.	68	63

SUN TABLE.

Sun rises.	Sun sets.
5:36	6:22

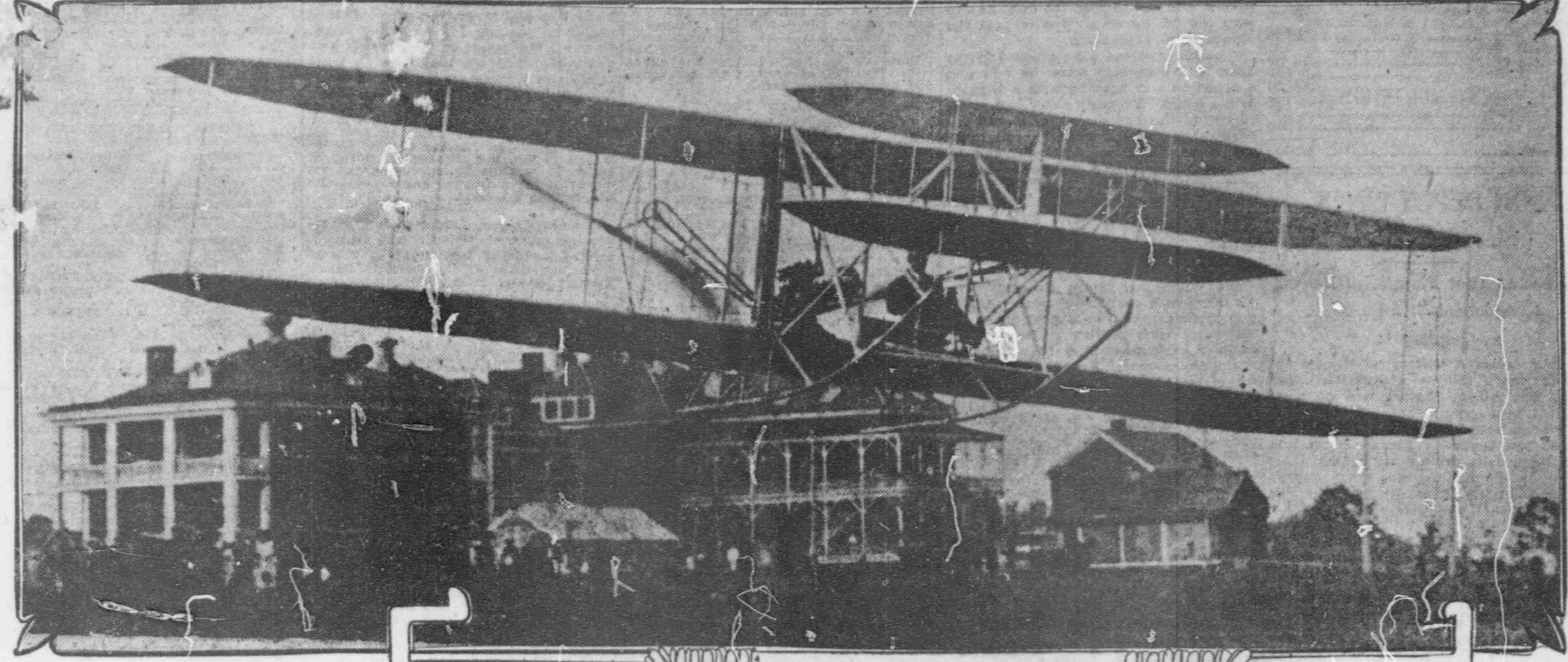
TIDE TABLE.

High water today.	Low water today.
7:43 a. m.	1:42 a. m.
High water tomorrow.	8:35 a. m.
Low water tomorrow.	2:35 a. m.

# The Washington Times

WASHINGTON, THURSDAY EVENING, SEPTEMBER 10, 1908.

## Orville Wright and His World-Beating Aeroplane



—Photo by J. S. Reid.  
The Wright Aeroplane in Flight.

## AEROPLANE TO MAKE FLIGHTS AT FT. MYER

Orville Wright Says He Will  
Experiment Often Before  
Official Test.

AVIATOR CONFIDENT  
OF GAINING HONORS

Flights Yesterday Showed Con-  
clusively That Ohioan Has Mas-  
tered Aerial Navigation.

Several more flights will be made over the parade grounds at Fort Myer by Orville Wright before he puts his record-breaking aeroplane through the Government's official test. Mr. Wright says that his machine is working splendidly, but he wants to be certain that his aeroplane will meet every requirement before his final flight.

So far Mr. Wright has not asked the board of Signal Corps officers in charge of the tests to set a date for an official test.

The Signal Corps officers have decided that the Alexandria course, which was first mapped out for the Baldwin dirigible, but which was never used by that air navigator, will be used by Wright when he makes his straight-away and speed tests. The endurance test will most likely be made about the parade ground, although no one, not even Mr. Wright, knows just what he will do when he goes up for the final flight.

The flights yesterday afternoon while each broke a record, were not more wonderful than that of the morning, the same ease of manipulation being shown by the aviator as he showed earlier in the day.

Flight Shows Superiority.

The first afternoon flight, made without any intention of beating the morning time of 57 minutes and 31 seconds, resulted, however, in showing how easy it is for Wright to smash all sorts of flying records. He stayed up on that first flight just 62 minutes and 15 seconds, made 55 circles of the parade grounds, and altogether exhibited an increasing confidence in himself and in his machine.

As in the morning the conditions were almost ideal. There was practically no wind blowing. The sun shone brightly when the aviator started and the man and the engine were both apparently fit for a great feat. The flight began at 5:15 o'clock, and ended at 6:20:15.

The second flight, made almost immediately after the finish of the first, was taken that Mr. Wright might show the assembled dignitaries, such as Lieut. Gen. Nelson A. Miles, retired; Secretary McLean, Secretary Straus and Secretary Wright, General Oliver, General Murray and others, just what his machine could do in the way of lifting two men.

Lahm Clears Field.

Lieut. Frank P. Lahm was to make the ascent and consequently everyone was ordered from the Signal Corps tent, including Mr. Crane, a close personal friend of Wright. All the newspaper men who have badges issued by General Allen, which seem to be useless, were ordered to move from the "press tent" and, ultimately, Augustus Post, secretary of the Aero Club of America, one of the most devoted aeronauts who has ever visited Fort Myer, was driven back from the field by the soldiers, acting under Mr. Lahm's orders.

On this second trip, Wright stayed up six minutes and twenty-six seconds, thus breaking his own record for a two-man ascent by about three minutes. The aeroplane sailed just a bit more steadily with the passenger than it had without one, although it rose more slowly and perhaps traveled just a trifle less rapidly.

General Miles Interested.

One of the most interested of all the hundreds of spectators was General Miles, who came down to Washington partly to see the Wright aeroplane sail through the air.

"I was a member of the board," he said, as he sat in his carriage watching the flight.

(Continued on Fourth Page.)

## Wright's Best Records

Date.	Place.	Time.	Distance.
May 3, 1907.	Killbuck, N. C.	3 m. 40 s.	3 miles
Oct. 1, 1907.	Dayton, Ohio.	38 m.	unknown
1905.	Ohio.		

The above were unofficial.

## RECORD MADE BY WILBUR WRIGHT IN FRANCE.

Date.	Place.	Time.	Distance.
Sept. 5, 1908.	Le Mans, France.	19 m.	12 miles

## RECORDS MADE BY ORVILLE WRIGHT IN AMERICA.

Date.	Place.	Time.	Distance.
Sept. 8, 1908.	Fort Myer, Va.	11 m. 10 s.	6 1/2 miles
Sept. 9, 1908.	Fort Myer, Va.	62 m. 15 s.	38 1/2 miles
Sept. 9, 1908.	Fort Myer, Va.	6 m. 26 s.	4 miles
1908.	Fort Myer, Va.		

\*Took passenger, thus breaking record for two-man aeroplane flying.

## ALL OHIO LAUGHING AT GEORGE B. COX

Cincinnati "Boss" Changes  
Front and Takes Up  
Taft's Fight.

By JAMES HAY, JR.

CINCINNATI, Ohio, Sept. 10.—George B. Cox, Republican boss of Cincinnati and the county of Hamilton, sits in his office in the Cincinnati Trust Building today and hears all Ohio laughing at the satirical drama of politics in which he is presenting himself and a select group of players.

Denounced by Taft three years ago, as the head of a "ring," whose candidates did not deserve support from the voters, Cox has had himself and his two right-hand men appointed a committee of three to conduct Taft's campaign in this city and county, when Judge Taft was told of this action, he did not look pleased and said he did not suppose the committee would have much to do as it had probably been named to look after the front porch speeches, which had been planned but now abandoned.

Forgets the Past.

But Cox would not accept this rebuff. He said this morning that he and his two lieutenants were on the ground to co-operate with Judge Taft in the conduct of the whole campaign in this city and county. It was at Akron, Ohio, in 1906, that Taft denounced Cox and his crew in Hamilton county in such emphatic and forcible terms as to leave them no room to doubt of his disapproval and dislike of them. Ever since then, Cox has posed as the sworn foe of Taft. Now he comes forward to embarrass the Presidential candidate with the proffer of aid, which he knows Taft does not want.

Some of the independent Republicans here go so far as to say that Cox has taken this action with a view to humiliating Taft, as the candidate's great strength throughout Ohio is built on his opposition to the "ring" of this county, and, if he made a compact with the "ring," the independents might turn from him. Others say Cox is actuated by a desire for revenge, and wants Taft to make peace with him personally.

Taft Not Enthusiastic.

Taft has not welcomed the satirical play with any enthusiasm. From one of his close personal friends comes the information that he will make no advances to Cox, and that he will take no notice of the appointment of the committee.

(Continued on Eighth Page.)



Orville Wright Examining the Aeroplane Preparatory to Making the Record-Breaking Flight at Fort Myer Yesterday Afternoon.

## Wouldn't Let Old Soldiers Sleep, William Bomington Shot in Fight With the Veteran He Had Annoyed

Because William Bomington persisted in annoying his roommates in one of the dormitories in the Sheridan building at the Soldiers' Home, and because he continued night after night to worry William H. White, who is feeble and almost blind, until the aged man could not go to sleep until nearly daylight, White shot Bomington through the chest with a .38-caliber revolver last night.

Bomington is in the Soldiers' Home hospital with a wound clear through his body. The bullet entered his right chest and came out through his back, lodging in the woodwork around the door casing. The doctors say his condition is serious, and but little hope is entertained for his recovery.

Charged with assault with intent to kill, White was brought to the Tenth precinct station this morning from the guardhouse at the home, where he was confined during the night. Although the shooting occurred shortly after 11 o'clock last night, the police were not informed of the affair until 9 o'clock this morning.

"Yes, I shot him," said White as he was led into his cell. "He had been worrying me until I just couldn't stand it any longer. I didn't mean to kill him, though. I fired to scare him and I didn't know for several minutes that the bullet had struck him. All I wanted to do was scare him so that he would leave me alone."

White is sixty years of age and his eyesight is nearly gone. He looks much older than his years. Bomington is forty-five, and was a powerful fellow, more than six feet tall. He had the reputation of being the strongest man at the home, and his sole amusement seemed to be in annoying the old and feeble inmates.

"I had warned Bomington what would happen to him and he knew what to expect," continued White. "He seemed to delight in bothering me all the time. It had gotten so that he wouldn't let me sleep any at night. He bothered the others, too, but he always annoyed me the most."

Both White and Bomington have been inmates of the home for a number of years. Bomington was a member of D Battery, Fourth Artillery, and White was a member of K Troop, Third Cavalry.

Miller accuses Receiver Ambrose of Charge of Theft of \$173,000 Falls From Lack of Federal Evidence.

CHICAGO, Sept. 10.—The case against George Fitzgerald, accused of stealing \$173,000 from the United States Treasury here, was dismissed today by Judge Cretin after Subtreasurer Borden had refused to produce the records of his office as evidence.

When the court dismissed the case, he said that hearing of evidence at this time would prejudice the investigation of the theft now being made by the Government. He declared the Government's interest in the case was paramount and had no right to embarrass it by insisting that the case be pushed.

Moses 14th Annual September Sale.—Adv.

FINANCIAL  
LAST EDITION  
With Closing N. Y. Stock Prices.

PRICE ONE CENT.

## COMMODITY CLAUSE ADJUDGED INVALID

Judge Gray Hands Down  
Decision on the Hep-  
burn Bill Case.

DECREE DISMISSES  
PENDING QUESTIONS

Announcement Comes After Bitter  
Legal Fight in the Federal  
Courts.

PHILADELPHIA, Pa., Sept. 10.—The commodity clause in the Hepburn act, under which the Government brought suit against half a dozen big railroads owning coal mines in Pennsylvania, to oust them from specific possession of the properties, was knocked out today in a 20,000-word opinion handed down by Judge Gray of the United States Circuit Court here today. Judge Dallas, assenting, Judge Macpherson dissented from the majority, but did not write an opinion.

In the main the majority opinion upholds the arguments made by the distinguished counsel which represents the coal roads at the hearing, and by invoice reasoning, declares the commodity clause to be unconstitutional. This was done by summarily dismissing the bill of complaint filed by the Government, through Attorney General Bonaparte.

Briefly the constitutionality of the law is attacked on the ground that it is contrary to State's rights and, therefore, illegally interferes with the power of a sovereign commonwealth to conduct its own business.

From beginning to end the majority opinion is a clean knockout for the Government.

How Hepburn Law  
Affects Coal Roads

The so-called "commodity clause" of the Hepburn act, regulating railway traffic, was inserted in the bill with a view of making it impossible for railroads to engage in any other business than that of common carriers.

It was directed especially against the Eastern coal roads, and provided that railroads should not own coal mines other than for furnishing coal for their own use; that they could not haul their own coal to market and sell it either directly or through selling agencies, and that they could not hold stock in coal companies.

The railroads that would have been chiefly affected by this law had the court not declared it unconstitutional, are the Reading, Delaware, Lackawanna and Western, and Delaware and Hudson, all of which own coal mines. Western roads operate small mines on their lines, but the "Big Three" were the special objects of this legislation.

Had the law been sustained as constitutional in litigation, or should the United States Supreme Court, where the final adjudication will be rendered, sustain the constitutionality of the clause, it will be necessary for the "coalers," as this group is known on Wall Street, to dispose of their mining property.

The act required the absolute abandonment by railroads of coal, oil, and other business after May 1, of this year.

In accordance with an agreement between the Department of Justice and leading railroad companies, the enforcement of the clause was suspended, pending a decision from the Supreme Court.

The coal operating railroads held that in view of the legal question raised any other course would mean financial loss to them. President Roosevelt acquiesced in the promptness with which the court has acted at Philadelphia today is pointed out by the Department of Justice as assurance of early consideration of the question by the Supreme Court of the United States.

IOWANS MAY NAME  
SMITH FOR SENATE

Legislature, Now Deadlocked  
Against Gov. Cummins, May  
Turn to Representative.

DES MOINES, Iowa, Sept. 10.—Having carried out their determination to prevent the election of the United States senator for the short term of Governor Cummins by deadlocking the Legislature, the "stand-patters" today considered the advisability of combining their strength on one candidate.

The belief today is that Representative Walter I. Smith will be the "stand-patter" candidate, and that the Legislature will support him in joint session at noon today to ballot against Gov. Cummins.

In the second ballot Governor Cummins received 64 votes, Claude Porter, Democrat, 48, and the rest were scattering.

FOREST FIRES RAGE;  
RESIDENTS IN FEAR

BAY CITY, Mich., Sept. 10.—The forest fires which have been devastating the northern portion of the Michigan peninsula, and which had shown signs of subsiding, have been fanned into renewed fury today by a strong southwest wind.

Great anxiety is felt for the safety of Rose City, Au Gres, the summer resort at Otsego Lake and Starline, Arenac county. Almost the entire country between Pigeon and Roscommon is ablaze. Water is being shipped in barrels from Omer, Mich., and the Michigan Central railroad has a special train in readiness here to send out if assistance is called for.

DULUTH, Minn., Sept. 10.—The forest fires which have been raging in this vicinity have at last almost reached this city, fires having broken out this afternoon in the suburbs of Lester Park.

PORT WILLIAM, Ontario, Sept. 10.—The forest fires which have made a clean sweep of this whole district are approaching the city's limits and a desperate fight is being made against the approach of the flames. It is reported that a Canadian Pacific locomotive went through the flames and fell through a bridge thirty-five feet into a ravine.

Moses 14th Annual September Sale.—Adv.